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SEP 1 1996

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Attorney for Defendant Harold B. Chapman, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO HEADQUARTERS

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 vs.

25 HAROLD B. CHAPMAN, JR.,

26 Defendant.

CIVIL NO. C94 1033 CAL

PARTIAL CONSENT DECREE
RESOLVING THE SECOND, THIRD
AND FOURTH CLAIMS FOR RELIEF

C94 1033 CAL: PARTIAL
CONSENT DECREE

1 WHEREAS Plaintiff the UNITED STATES OF AMERICA, on behalf of
2 the Environmental Protection Agency ("EPA"), has filed a Complaint
3 against Defendant HAROLD B. CHAPMAN, Jr. ("CHAPMAN") alleging Four
4 Claims for Relief under the Comprehensive Environmental Response,
5 Compensation & Liability Act ("CERCLA").

6 WHEREAS, the First Claim for Relief alleges that EPA incurred
7 response costs and that CHAPMAN is liable for those costs under
8 Section 107(a) of CERCLA, 42 U.S. C. § 9607(a); the Second Claim
9 for Relief alleges that CHAPMAN is liable for treble damages under
10 Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3); the Third Claim
11 for Relief alleges that CHAPMAN is liable for civil penalties under
12 Section 106(b) of CERCLA, 42 U.S.C. § 9601(b); and the Fourth Claim
13 for Relief alleges that CHAPMAN is liable for civil penalties under
14 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e); and

15 WHEREAS, CHAPMAN disputes and denies all liability under
16 CERCLA for the First, Second, Third, and Fourth Claims for Relief,
17 and nothing herein shall be construed as an admission of liability
18 by CHAPMAN to any allegation contained in the Complaint; and

19 WHEREAS, this Partial Consent Decree was negotiated and
20 executed by the Parties to avoid the continuation of expensive and
21 protracted litigation;

22 WHEREAS, CHAPMAN and the UNITED STATES do hereby consent to
23 entry of this Partial Consent Decree as the most appropriate means
24 of resolving the Second, Third, and Fourth Claims for Relief. This
25 Partial Consent Decree and settlement herein does not affect in any
26 way the First Claim for Relief, which the parties do not agree to
27 settle;

28

1 THEREFORE upon the consent and agreement of the parties to
2 this Partial Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

3 I. Jurisdiction and Venue

4 1. The Court has jurisdiction over the subject matter and
5 the parties, and venue is properly in this Court.

6 II. Parties Bound

7 2. The provisions of this Partial Consent Decree shall apply
8 to and be binding on: (a) CHAPMAN, his heirs and assigns, and (b)
9 the UNITED STATES, acting on behalf of the Environmental Protection
10 Agency. CHAPMAN hereby certifies that he is fully authorized to
11 enter into and execute this Partial Consent Decree, and to legally
12 bind himself to its terms. In any action to enforce this Partial
13 Consent Decree, CHAPMAN shall not raise as a defense to enforcement
14 the failure by any of his agents, servants, contractors, employees,
15 attorneys, heirs or assigns to take actions necessary to comply
16 with this Partial Consent Decree.

17 3. CHAPMAN and the UNITED STATES agree to be bound by this
18 Partial Consent Decree and the parties agree not to contest its
19 validity in any subsequent proceeding to implement or enforce its
20 terms.

21 III. Settlement Payment

22 4. Within fifteen (15) calendar days after the Court's entry
23 of judgment on the First Claim for Relief in favor of the UNITED
24 STATES, CHAPMAN shall pay FIFTY THOUSAND DOLLARS (\$50,000.00) in
25 full and final settlement of the Second, Third, and Fourth Claims
26 for Relief.

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1 5. CHAPMAN shall pay any interest accrued on the balance of
2 any unpaid amounts due under this Partial Consent Decree, at the
3 rate of 6.5% per annum, commencing on the date that such amounts
4 were due. Further, this Partial Consent Decree shall be considered
5 an enforceable judgment for purposes of post-judgment collection,
6 and interest, in accordance with Rule 69 of the Federal Rules of
7 Civil Procedure and other applicable federal authority. Further,
8 CHAPMAN shall be liable for all fees and costs incurred by the
9 UNITED STATES to collect any amounts due under this Partial Consent
10 Decree, provided the UNITED STATES prevails in any proceeding to
11 collect any amount due hereunder.

12 6. CHAPMAN shall make the payment due under Paragraph 4,
13 above, in the form of a certified or cashier's check, made payable
14 to "U.S. Department of Justice" and transmitted by U.S. Mail to
15 Patrick Bupara, Assistant United States Attorney, Northern District
16 of California, 450 Golden Gate Avenue, Box 36055, San Francisco,
17 California 95102. The letter transmitting the check shall
18 reference this Partial Consent Decree, the caption and index number
19 of this case, USAO File Number 9401088, the EPA Region and the Site
20 Spill ID Number 09S5, and DOJ Case Number 90-11-2-988. CHAPMAN
21 shall send a copy of the check and transmittal letter to Chief,
22 Environmental Enforcement Section, Environmental and Natural
23 Resources Division, U.S. Department of Justice, P.O. Box 7611,
24 Washington, D.C. 20044.

25 7. CHAPMAN shall not deduct the amount paid under this
26 Settlement Payment from his federal, state, or local income taxes.

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1 V. Retention of Jurisdiction

2 9. This Court retains jurisdiction to enforce this Partial
3 Consent Decree until such time as the Second, Third, and Fourth
4 Claims for Relief are dismissed as provided in Paragraph 8 above.

5 VI. Effective Date

6 10. This Partial Consent Decree shall become effective upon
7 entry of this Partial Consent Decree by this Court.

8
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10 ORDER

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12 IT IS SO ORDERED this 10th day of September, 1996

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14 Charles A. Legge
15 Charles A. Legge
16 United States District Judge
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1 FOR PLAINTIFF THE UNITED STATES OF AMERICA:

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3 Dated: 9/9/96

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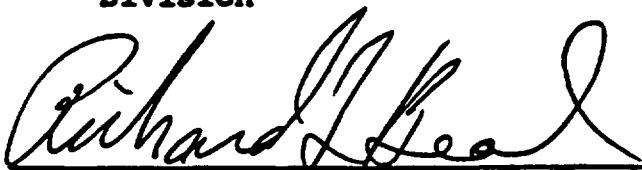
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Dated: 8.26.96

John Wine
FELICIA MARCUS *for*
Regional Administrator
U.S. Environmental Protection Agency
Region IX

OF COUNSEL:
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Assistant Regional Counsel
U.S. EPA, Region 9
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San Francisco, California 94105

1 FOR DEFENDANT HAROLD B. CHAPMAN JR.

2 Dated: 8/17/96

3 Harold B. Chapman Jr.
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